

APPEAL NO. 021641
FILED AUGUST 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 6, 2002. The hearing officer determined that the compensable (left bicep) injury does not extend or include a left shoulder rotator cuff tear and that the appellant (claimant) had disability from November 12, 2001, through March 12, 2002, but not for some other dates before and after the dates of the disability found by the hearing officer.

The claimant appealed, arguing that another hearing officer had found a compensable right shoulder rotator cuff tear (affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 012515, decided November 28, 2001), which established the mechanics of the injury for a left shoulder rotator cuff tear injury; that “[p]recedent demands that a similar result be reached” in this case; that a left shoulder rotator cuff tear injury is supported by the medical evidence; and that the claimant had disability from August 13, 2001, to the date of the CCH. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable left bicep injury on _____, and that the Texas Workers' Compensation Commission “has made a final administrative determination [Appeal No. 012515, *supra*], which is on appeal to the courts, that the compensable injury includes a right rotator cuff tear.” The claimant alleges that the mechanics of the injury are the same and that another hearing officer’s decision in Appeal No. 012515 should be binding on this hearing officer. We disagree. As we stated in Appeal No. 012515, extent of injury is a question of fact and the hearing officer is the sole judge of the weight and credibility to be given to the evidence.

There was conflicting evidence, and a carrier peer review doctor, after reviewing the medical evidence and a surveillance videotape, testified why, in his opinion, the claimant’s left shoulder rotator cuff tear injury was not related to the compensable injury. Similarly, regarding the disability issue, different inferences could be drawn from the evidence. Whether the claimant had disability, as defined in Section 401.011(16), between August 13, 2001, and November 12, 2001, when the claimant had surgery for the compensable right shoulder rotator cuff tear injury, was a question of fact for the hearing officer to resolve. The hearing officer found disability from November 12, 2001, through March 12, 2002, when he found that the claimant’s right shoulder rotator cuff tear injury had resolved. The hearing officer’s determination on the disability issue is supported by sufficient evidence.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge